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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 SHANNON ROBINSON, *et al.*,  
12 Plaintiffs,  
13 v.  
14 CITY OF SAN DIEGO, *et al.*,  
15 Defendants.  
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Civil No. 11-CV-0876-AJB (WVG)  
ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFFS'  
MOTION TO COMPEL  
DISCOVERY  
[DOC. NO. 51]

18 On January 31, 2013, Plaintiffs filed a Motion to Compel Discovery. (Doc.  
19 No. 51.) In their Motion, Plaintiffs asked the Court to (1) allow Plaintiffs the use of  
20 expert testimony in police practices; (2) quash any subpoena served after the discovery  
21 cut-off and forbid the use of any documents discovered as a result of the untimely  
22 subpoenas; (3) order un-redacted pages of Internal Affairs ("IA") files be produced to  
23 the Court for an *in camera* review; and (4) order the production of outstanding  
24 discovery. Id.

25 On February 1, 2013, Plaintiffs filed a Notice of Lodgment in Support of their  
26 Motion to Compel Discovery. (Doc. No. 56.) On February 8, 2013, Defendants filed  
27 a Response to Plaintiffs' Motion. (Doc. No. 59.) On February 22, 2013, this Court held  
28 a Hearing on Plaintiffs' Motion to Compel Discovery.

1 The Court has reviewed Plaintiffs' Motion and supporting lodgments, Defen-  
2 dants' Response and supporting exhibits, and listened to the arguments asserted by  
3 counsel for all parties during the Motion Hearing. For the reasons set forth below,  
4 Plaintiffs' Motion to Compel Discovery is hereby GRANTED in part and DENIED in  
5 part.

6 **A. PLAINTIFFS' USE OF EXPERT TESTIMONY IN POLICE PRACTICES**

7 On February 8, 2013, this Court issued an Order Imposing Discovery Sanctions  
8 on Defendants. (Doc. No. 60.) In the Order, the Court allowed Plaintiffs to submit an  
9 expert report regarding police practices. *Id.* at 8. Therefore, as Plaintiffs acknowledged  
10 during the Motion Hearing, Plaintiffs' request for use of expert testimony in police  
11 practices is now moot.

12 **B. SUBPOENAS ISSUED AFTER DISCOVERY CUT-OFF DATE**

13 **1. BACKGROUND**

14 Plaintiffs claim that, on December 24, 2012, they received a notice of subpoenas  
15 from a copy service with a service date of December 26, 2012. (Doc. No. 51 at 1.) Per  
16 the Court's Second Amended Scheduling Order, all discovery pertaining to facts was  
17 to be completed on or before September 14, 2012. (Doc. No. 30 at 2.) While  
18 Defendants concede that, "there may have been some errors by Defendants' vendor,"  
19 they assert that no subpoenas were sent out in December of 2012. (Doc. No. 59 at 2.)  
20 However, Defendants represented to the Court during the Motion Hearing that  
21 uncertainty remains as to when the subpoenas were actually issued.

22 **2. RULING**

23 Any subpoenas issued after the fact discovery cut-off date of September 14,  
24 2012, are untimely. Responsive documents, if any, obtained by Defendants as a result  
25 of untimely subpoenas, may not be used by Defendants in this litigation.

26 **C. REDACTED CONCLUSIONS IN INTERNAL AFFAIRS REPORT**

27 Plaintiffs assert that, due to the delay in discovery and consistent communication  
28 problems, they agreed with Defendants that they would not request ultimate conclusions

1 of the IA investigator. (Doc. No. 51 at 3.) However, Plaintiffs claim that, when the  
2 reports were provided to them on December 14, 2012, thirty-three pages were redacted  
3 in their entirety. Id. Plaintiffs argue that, “[s]imply because the investigator wrote at  
4 the top of the page the word ‘Conclusions’ does not mean that every sentence in [thirty-  
5 three] pages constitutes ultimate conclusions regarding liability or fault.” Id. at 3-4.  
6 Plaintiffs claim that they are entitled to Defendants’ analysis and reasoning. Id. at 4.  
7 Plaintiffs have requested that the Court conduct an *in camera* review of the redacted  
8 pages<sup>1/</sup> that Defendants claim to be conclusions. Id.

9 Defendants simply argue that, “[c]onclusions, impressions, confidential third-  
10 party information, and information covered by any other legal privilege were redacted  
11 from the documents.” (Doc. No. 59 at 5.) During the Motion Hearing, Defense counsel  
12 represented to the Court that the thirty-three redacted pages at issue were not the  
13 investigator’s report, but rather, were pages written by an attorney and protected by the  
14 attorney-client privilege.

15 On February 22, 2013, during the Motion Hearing, and again in a written Order,  
16 the Court ordered Defendants to provide the redacted pages at issue for an *in camera*  
17 review. (Doc. No. 63.) On February 25, 2013, in compliance with the Court’s Order,  
18 Defendants delivered copies of the redacted and un-redacted versions of the IA pages  
19 at issue to the Court. That same day, Defense counsel filed a Declaration explaining  
20 that the IA pages at issue in Plaintiffs’ Motion were not covered by the attorney-client  
21 privilege as represented by Defendants during the Motion Hearing. (Doc. No. 64.)  
22 However, Defense counsel made clear that Defendants, “continue to assert that the  
23 documents were properly redacted” in accordance with the agreement made between  
24 the parties that conclusions and impressions would be redacted from the documents.  
25 Id. at 3.

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28 <sup>1/</sup> The pages at issue in Plaintiffs’ Motion to Compel are Bates stamp numbers 2397 through  
2430.

1 The Court has reviewed the documents *in camera* and HEREBY ORDERS  
2 production as indicated in the Attached Exhibit A to this Order.<sup>2/</sup>

3 **D. PRODUCTION OF OUTSTANDING DISCOVERY**

4 In their Motion to Compel, Plaintiffs also notified the Court of several issues  
5 related to the production of outstanding discovery. Plaintiffs claims that the majority  
6 of the IA discovery which Defendants provided on a single compact disc was  
7 mislabeled, the IA reports were missing Taser-related materials, and Defendants failed  
8 to produce a compact disc containing a specific U-Stream video. (Doc. No. 51 at 3-4.)

9 Prior to filing a Response to Plaintiff's Motion to Compel, Defendants produced  
10 exact copies of the nineteen original compact discs containing IA files. (Doc. No. 59  
11 at 4.) Defendants provided copies of the individual discs in an effort to show that no  
12 files or labels were manipulated when the files were consolidated onto one disc for  
13 production. *Id.* Further, during the Motion Hearing, Defendants represented to the  
14 Court and to Plaintiffs that they do not possess a compact disc with a U-Stream video,  
15 and Plaintiffs acknowledged that the issue regarding the Taser-related materials had  
16 become moot. The Court now finds all of these discovery issues to be moot.

17 **E. CONCLUSION**

18 The Court hereby GRANTS Plaintiffs' request to quash any subpoena served  
19 after the discovery cut-off and forbid the use of any documents discovered as a result  
20 of the untimely subpoenas. The Court, having granted Plaintiffs' request to order  
21 Defendants to provide the un-redacted pages of the IA report for an *in camera* review,  
22 now orders Defendants to produce the un-redacted documents to Plaintiffs in  
23 accordance with the attached Exhibit A. While the Court orders all of the documents  
24 to be produced, the Court orders redactions as noted in Exhibit A.

25 Further, Plaintiffs' requests to use expert testimony in police practices and to  
26 order the production of outstanding discovery, are hereby DENIED as moot.

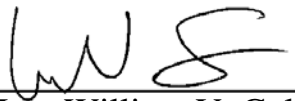
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<sup>2/</sup>Exhibit A lists each document by the Bates stamp number produced by Defendants.

1 IT IS SO ORDERED.

2 DATED: February 28, 2013

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5 Hon. William V. Gallo  
6 U.S. Magistrate Judge  
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## EXHIBIT A

| <b>DEFENDANTS' IA REPORT - REDACTED PAGES (BATES NOS. 2397 - 2430)</b> |         |                |   |
|--|---------|----------------|---|
| Bates Stamp #  | Produce | Do Not Produce | Comments  |
| 2397   | X       |                | Redact first line after "Conclusions.   |
| 2398   | X       |                |   |
| 2399   | X       |                |   |
| 2400   | X       |                | Redact paragraph immediately before the heading, "Investigator Note."   |
| 2401   | X       |                |   |
| 2402   | X       |                | Redact fifth paragraph, which begins immediately after the sentence, "Yes Office Savage did."   |
| 2403   | X       |                |   |
| 2404   | X       |                |   |
| 2405   | X       |                | Redact the last two paragraphs.   |
| 2406   | X       |                | Redact the first paragraph, which is continued from the previous page. Redact the last two paragraphs.  |
| 2407   | X       |                | Redact the entire page, except for the last three lines.  |
| 2408   | X       |                |   |
| 2409   | X       |                |   |
| 2410   | X       |                |   |
| 2411   | X       |                |   |
| 2412   | X       |                |   |
| 2413   | X       |                |   |
| 2414   | X       |                |   |
| 2415   | X       |                |   |
| 2416   | X       |                |   |
| 2417   | X       |                | Redact the ninth paragraph, which begins immediately after the words, "of about six feet."<br>Redact the tenth paragraph, which consists of one line. |

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